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November 22, 2024

VIA ECF

Honorable Barbara Moses
United States District Court
Southern District of New York
Daniel Patrick Moynihan Courthouse
500 Pearl Street, Room 740
New York, NY 10007

Application GRANTED. The parties must submit their proposed Joint Pretrial order no later than **December 17, 2024. SO ORDERED.**



BARBARA MOSES
United States Magistrate Judge
November 25, 2024

Re: *BDG Gotham Residential, LLC and ZDG, LLC v. Western Waterproofing Company, Inc. d/b/a Western Specialty Contractors and Western Surety Company; Case No. 19-cv-06386 (CM)(BCM) [rel. 20-cv-03199]*

Dear Judge Moses:

This firm represents Plaintiff BDG Gotham Residential, LLC (“BDG”) in the context of the above-captioned litigation. We write on behalf of BDG and co-Plaintiff ZDG, LLC (“ZDG”) (collectively, “Plaintiffs”) to request an additional two week extension of the December 2, 2024 deadline for the submission of a Joint Pretrial Order established by the Court in its September 30, 2024, Opinion and Order (Dkt. No. 216) resolving the motions for summary judgment. By Order dated October 11, 2024 (Dkt. No. 218), the Court granted an initial thirty (30) day extension from October 30. Defendants Western Waterproofing Company, Inc. d/b/a Western Specialty Contractors and Western Surety Company (“Defendants”) have consented to this request and have contributed to this letter.

To date, the parties have exchanged portions of the Pretrial Order as required by Your Honor’s Individual Practices (Rule 4), including statements of jurisdiction, claims, defenses, contentions and damages to be tried. The parties have also exchanged a preliminary stipulation of facts, although there is much work to be done to complete it.

As for exhibits and deposition designations, Defendants have already provided their potential trial exhibits and deposition designations. Plaintiffs need additional time to provide their exhibits and designations, and then Defendants will need time to review Plaintiffs’ exhibits and

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designations in order to determine whether they will include additional exhibits and designations. Plaintiffs' delay has been caused in part because counsel for BDG has been actively engaged in preparation for a large jury trial in Philadelphia that was scheduled to commence on December 6 that was only settled in the past week.

In light of the time necessary to compile and confer regarding these submissions (including several hundred proposed trial exhibits), counsel for all parties agree that they would be unable to meet the current deadline of November 29 with a Joint Pretrial Order that would effectively fulfill the purpose of such Order. The parties were previously able to work together to compile and prepare an extensive Joint Stipulation of Material Facts and Exhibits for the purposes of the recent summary judgment motions, and believe that they will be able to prepare a Joint Pretrial Order of similar usefulness for trial with the additional time.

As part of this extension request, Plaintiffs have agreed that they will produce their exhibits and deposition designations to Defendants no later than Tuesday, November 26, 2024.

The parties do not believe that this requested extension of time will impact or delay the potential trial date for this case. In its prior Order of October 11, 2024 (Dkt. 218), the Court advised that the parties should be prepared for trial to commence on April 7 or April 14, 2025. Accordingly, the parties respectfully do not believe that the requested extension of the filing date for the Joint Pretrial Order to December 17 will delay the trial of this case.

Respectfully submitted,

John S. Wojak, Jr.
John S. Wojak